is clearly intended, or at least is calculated, to prejudice a trial which is pending."

In the same case, Wright J. said (at p. 581) :—

"I agree with all that the Lord Chief Justice has said, and I only wish to add that, in my opinion, in order to justify an application to the court the publication complained of must be calculated really to interfere with a fair trial, and, if this is not the case, the question does not arise whether the publication is so objectionable in its terms as to call for the interference of the court. If the publication is found likely to interfere with a fair trial, a second question arises, whether, under the circumstances of the case, the jurisdiction which the court in that case possesses ought to be exercised, not so much for punishment as for preventing similar conduct in the future. That is the rule which I wish to adopt with regard to applications of this nature."

Accordingly, the question in every case is whether, in all the circumstances existing at the date of publication, including the content and form of the article, the circulation of the paper in which it appears and the state of the proceedings, the article was intended or calculated to prejudice the fair hearing of the proceedings.

In this case there is no suggestion, and indeed there is no evidence, that the respondents intended to prejudice the fair hearing of the proceedings against the applicant. The sole question therefore is whether the statements and articles complained of are, under all the surrounding circumstances, calculated really to interfere with the fair trial of the applicant.

Let us now examine the statements and articles. First, the statement made by the Minister to the *Straits Times* reporter. There is no doubt that it was made in reference to the Gay World incident but the reference was to what the police did at the gathering. The statement was far too general in character to refer directly to the charges against the applicant. In my view there was nothing in it which could be said to interfere or tended to interfere with the course of justice.

Second, the ministerial statement. This statement was concerned with certain disruptive movements and forces in the State and the lawlessness that had taken place. Not only did the statement refer to the Gay World incident but also to other incidents which took place prior to the 22nd October, 1966. There had been a number of incidents in several parts of Singapore for two days which took the form of illegal street demonstrations and which culminated in the Gay World incident. There was no reference either directly or indirectly to the applicant or to any of the persons who were charged in court or to any pending criminal proceedings. It is true that the phrase "strong arm boys" was used but there was no insinuation that the applicant was one of them. The statement also mentioned that the Barisan Sosialis in a press statement on the 23rd October, 1966, described the Gay World incident as "the start of a blood-bath" and said that "the blood-debt must be paid." Now all these lawlessness were certainly matters of grave public interest and concern and the Government owed a high duty to the public to keep it informed. In my view the Minister responsible for keeping law and order would be failing in his duty to the public if he had not made some comment on the incidents, for otherwise there might be public apprehension that there was some truth in the "blood-bath" statement made by the Barisan Sosialis. I am of the view that this statement was not calculated to prejudice the fair trial of the applicant.

Third, the editorial. The facts in it came out of the ministerial statement. The comment was that the Government would not allow disturbances of this type to take place. This was certainly a generally-worded observation and a very appropriate observation to make in a time of disorder. There was no reference to the charges against the applicant nor was he named. Here again I can see nothing in the editorial which can be said to interfere or tend to interfere with the course of justice.

For these reasons I have come to the conclusion that the statements and articles did not constitute a contempt of court.

The motions are dismissed with costs.

Motions dismissed.

TEE THAN SONG CONSTRUCTION CO. LTD. v. KWONG KUM SUN GLASS MERCHANT

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Chua J.) July 4, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 20 of 1967]

Practice and Procedure — Summary judgment — Appeal against — Order whether final or interlocutory — R.S.C. 1934, O. XIV — Courts of Judicature Act, 1964, s. 68(2).

The respondents brought an action against the appellants by a specially indorsed writ for work done and materials supplied. They applied for summary judgment under O. XIV and the application was heard by the registrar who made an order giving them leave to enter final judgment for the sum claimed. The appellants appealed and Choor Singh J. who heard the appeal in chambers made an order dismissing it. The appellants then applied *ex parte* by way of summons in chambers to the High Court for leave to appeal to the Federal Court and Buttrose J. who heard the application granted it. The appellants served the respondents' solicitors with a copy of the notice of appeal to the Federal Court. This being the first intimation that the respondents had of the order made by Buttrose J., they applied by way of summons in chambers to set the order aside. Their application was heard by Buttrose J. who after hearing the solicitors for both parties made an order setting aside his previous order on the ground that he had no jurisdiction to make the earlier order. The sole question before the Federal Court was whether the order of Choor Singh J. was an "interlocutory order" within the meaning of section 68(2) of the Courts of Judicaure Act.

Held: (1) the test for determining this question is: does the judgment or order, as made, finally disposed of the rights of the parties; if it does, then it ought to be treated as a final order; but if it does not, it is then an interlocutory order. This was the correct test to apply to section 68(2) of the Courts of Judicature Act, 1964, and the appeal should be dismissed;

(2) in this case it was the respondents who were in effect asserting that the appellants were entitled to appeal without leave against the order of Choor Singh J. on the ground that the order was not an interlocutory but a final order. That being the view taken by the respondents, the appellants having on the affidavits prosecuted the appeal against the O. XIV order within the time required under the Federal Court (Civil Appeals) Transitional Rules, 1963, need not have appealed against the 2nd order made by Buttrose J. as they had an absolute right to appeal against the order giving the respondents liberty to enter final judgment against them.

Cases referred to:—

(1) *Salaman* v. *Warner* [1891] 1 Q.B. 734.

(2) *Standard Discount Co.* v. *La Grange* L.R. 3 C.P.D. 67.

(3) *Bozson* v. *Altricham Urban District Council* [1903] 1 K.B. 547.

(4) *Egerton* v. *Shirley* [1945] 1 K.B. 107.

FEDERAL COURT.

Lee Heng Yong for the appellants/defendants.

C. F. J. Ess for the respondents/plaintiffs.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The plaintiffs brought an action against the defendants by a specially indorsed writ for work done and materials supplied. They applied for summary judgment under Order XIV and the application was heard by the Registrar who made an order giving them leave to enter final judgment for the sum claimed in the writ.

The first defendants appealed to a judge of the High Court and on the 23rd January 1967 the appeal was heard by Choor Singh J. in chambers, and he made an order dismissing the appeal.

The first defendants being desirous of appealing against the order of Choor Singh J. applied *ex parte* by way of summons in chambers dated 6th February 1967 to the High Court for leave to appeal to the Federal Court. This application was heard by Buttrose J. who made an order on the 13th February 1967 granting leave to appeal to the Federal Court.

On the 18th February 1967 the first defendants' solicitors served the plaintiffs' solicitors with a copy of a notice of appeal to the Federal Court. This being the first intimation that the plaintiffs had of the order made by Buttrose J., they applied by way of summons in chambers to the High Court to set aside the order made by Buttrose J. This application was heard by Buttrose J. on the 3rd March 1967 who after hearing the solicitors for both parties made an order setting aside his previous order of the 13th February 1967 on the ground that he had no jurisdiction to make the earlier order.

The first defendants appealed to the Federal Court against the order of Buttrose J. of the 3rd March 1967 and the appeal came up for hearing before us on the 13th June 1967 when we dismissed it with costs. We now proceed to give our reasons.

The sole question argued before us was whether the order of Choor Singh J. was an "interlocutory order" within the meaning of section 68(2) of the Courts of Judicature Act, 1964 which is in the following terms:—

> "68. (2) No appeal shall lie from an interlocutory order made by a judge of a High Court in chambers unless the judge has certified, after application, within four days after the making of such order by any party for further argument in court that he requires no further argument, or unless leave is obtained from the Federal Court or from a judge of the High Court".

The defendants contended that an order giving leave to sign final judgment under Order XIV is an interlocutory order as the proper test to determine whether an order is an interlocutory or a final one is as laid down in *Salaman* v. *Warner*.(1) In that case Lord Esher M.R. said at page 735:—

> "Taking into consideration all the consequences that would arise from deciding in one way and the other respectively, I think the better conclusion is that the definition which I gave in *Standard Discount Co.* v. *La Grange* is the right test for determining whether an order for the purpose of giving notice of appeal under the rules is final or not. The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory. That is the rule which I suggested in the case of *Standard Discount Co.* v. *La Grange*, and which on the whole I think to be the best rule for determining these questions; the rule which will be most easily understood and involves the fewest difficulties."

In *Standard Discount Co.* v. *La Grange* (2) the court held that an order empowering a plaintiff to sign final judgment upon a specially indorsed writ is an interlocutory order and that therefore an appeal against it must be brought within twenty-one days as required by Order 58 rule 15. Brett L.J. (as Lord Esher then was) there said at page 71:—

> "I think that our decision may perhaps be founded upon another ground, namely, that no order, judgment, or other proceeding can be final which does not at once affect the status of the parties, for whichever side the decision may be given; so that if it is given for the plaintiff it is conclusive against the defendant, and if it is given for the defendant it is conclusive against the plaintiff; whereas if the application for leave to enter final judgment had failed, the matter in dispute would not have been determined. If leave to defend had been

given, the action would have been carried on with the ordinary incidents of pleading and trial, and the matter would have been left in doubt until judgment. I cannot help thinking that no order in an action will be found to be final unless a decision upon the application out of which it arises, but given in favour of the other party to the action, would have determined the matter in dispute."

The plaintiffs on the other hand contended that the proper test was laid down in *Bozson* v. *Altrincham Urban District Council* [3] where Lord Alverstone C.J. at page 548 said:—

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."

Counsel for the plaintiffs also relied on *Egerton* v. *Shirley* [4] where, although the Court of Appeal declined to say which of the two conflicting tests was the correct one, nevertheless at page 110 said of an Order 14 order which was made in an action on a specially indorsed writ:—

"In our opinion, the rights of the parties in this case were finally disposed of when leave to sign final judgment was given by the master."

We preferred to adopt the test laid down by Lord Alverstone C.J. as being the correct test to apply to the provisions of section 68(2) of the Courts of Judicature Act, 1964 and accordingly dismissed the appeal.

Here, the position is an unusual one in that it is the plaintiffs who are in effect asserting that the defendants are entitled to appeal without leave against the order of Choor Singh J. on the ground that the order is not an interlocutory but a final order. That being the view taken by the plaintiffs, the first defendants having on the affidavits prosecuted the appeal against the Order XIV order within the time required under the Federal Court (Civil Appeals) Transitional Rules, 1963, need not have appealed against the order made by Buttrose J. on the 3rd March 1967 as they had an absolute right, according to the plaintiffs, to appeal against the order giving the plaintiffs liberty to enter final judgment against them.

Appeal dismissed.

Solicitors: *D. G. Ironside; R. C. H. Lim & Co.*

DAVID v. CHETTIAPPAN

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) & Ong Hock Thye F.J.) July 17, 1967]

[Ipoh — Federal Court Civil Appeal No. X. 36 of 1966]

Landlord and Tenant — Rent controlled premises — Recovery of possession — Whether rents collected exceeded maximum permitted — Meaning of "maximum permitted rent" how ascertained — Qui sentit commodum debet sentire et onus — Individual and multiple sub-letting — Control of Rent Ordinance, 1956, ss. 6 and 12(1)(j).

The premises No. 43 Station Road at Ipoh were premises governed by the Control of Rent Ordinance, 1956. The appellant, who was a tenant of these premises, appealed against the judgment for possession given against him in an action brought by his landlord, the respondent, on the ground that he had infringed paragraph (*j*) of sub-section (1) of section 12 of the Ordinance by collecting rents from individual sub-tenants in excess of the permitted rent for the parts respectively sublet to them, although in the aggregate the total rents collected from all sub-tenants were not an overcharge under paragraph (*j*).

The trial judge found the landlord's maximum recoverable rent to be $650 per month while rents collected by the tenant totalled $665 per month. The maximum he could have collected was $715.

Held: (1) in order to arrive at a finding as to what was the 'maximum recoverable rent' or 'maximum permitted rent' there must be evidence to ascertain what was the standard rent plus the increase of 50% according to the First Schedule. Scrutiny of the evidence showed that the trial judge had no data before him to make a finding as to what was the standard rent on or after September 25, 1940. The respondent therefore, failed to prove that the total rents collected by the appellant were in excess of the maximum permitted rent under the Ordinance;

(2) on the proper interpretation of paragraph (*j*) "rents" should mean the rent of one part sublet, where there is only one subletting, and aggregate rents where several parts are sublet to be considered as a whole.

Semble: where the plaintiff in an action has himself been in breach of mandatory provisions of the Ordinance, he is disentitled from relying on a double standard which is one sum of standard rent for him and a different sum for his tenant. "In such a case the court may fairly and properly apply the maxim: *Qui sentit commodum debet sentire et onus.*"

Cases referred to:—

(1) *Keane* v. *Clarke* [1951] 2 K.B. 732.

(2) *Bolger* v. *Daly* [1925] 2 I.R. 42.

(3) *Heydon's Case* (1584), 3 Co. Rep. 8.

(4) *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cases 743, 764.

(5) *The Solio Case* [1898] A.C. 571, 573.

FEDERAL COURT.

N. H. Chan for the appellant.

P. P. Dharmananda for the respondent.

Cur. Adv. Vult.

Azmi C.J. (Malaya): This is an appeal against the judgment of the High Court at Ipoh ordering the tenant of premises known as No. 43 Station Road, Ipoh, to deliver possession thereof to the landlord. The tenant now appeals to this court against that judgment. Having regard to the date of the incident, the Control of Rent Ordinance of 1956 would appear to apply in this case.

The cause of action before the High Court was based on respondent's right of recovery of possession under paragraph (*j*) of sub-section (1) of section 12 of the Ordinance, on the ground that the appellant had been collecting rents from